and dangerous places does not make one standing in such place a passenger, *Youngerman* v. *New York, N. H. & H. Ry. Co.*, 223 Mass. 29. But one who gets on a train at an unusual place will be deemed a passenger after safely entering the car, *Dewire* v. *Boston & M. Ry.*, 148 Mass 343. It is not within the authority of all agents to accept as passengers persons who present themselves. The permission of the engineer will not make one a passenger, *Grimshaw* v. *Lake Shore & M. S. Ry.*, 205 N. Y. 371, nor of the baggage man, *Reary* v. *Louisville, N. O. & T. Ry.*, 40 La. Ann. 32, nor of the brakeman, *Candiff* v. *Louisville, N. O. & T. Ry.*, 42 La. Ann. 477. A yardmaster, not acting in the course of employment, cannot accept persons as passengers, *Chi. St. P. &c. Ry.* v. *Bryant*, 65 Fed. 969. In the absence of a rule of practice to the contrary the freight conductor is not entitled to accept persons for carriage, *A. T. & S. F. Ry.* v. *Johnson*, 3 Okl. 41; *Bergan* v. *Cent. Ver. Ry. Co.*, 82 Conn. 574; *Neice* v. *Chi. & A. R. R. Co.*, 254 Ill. 595. But if an emergency arises, he may do so, *Vandalia R. Co.* v. *Darby*, 60 Ind. App. 294. It is within the apparent authority of passenger conductors to accept persons as passengers, *Fitzgibbon* v. *Chi. & N. W. Ry. Co.*, 108 Ia. 614; *Mo. K. & T. Ry.* v. *Pope*, (Tex. Civ. App., 1912), 149 S. W. 1185. The ticket agent has authority to make a contract for carriage, *Kan. Pac. Co.* v. *Kessler*, 18 Kan. 523; *Houston. E. & W. T. Ry. Co.* v. *Jackson*, (Tex. Civ. App., 1901), 61 S. W. 440. Where the president of one road was riding in the engine on the invitation of the president of the defendant road, the relation was created, *The Phil. & R .Ry. Co.* v. *Derby*, 14 Howard 468. The instant case holds that the division superintendent may create the relation of passenger and carrier by special contract.

CHARITIES—PURPOSES OF GIFT—ERECTION OF MEMORIAL.—A testator bequeathed his residuary estate to his executor to be devoted to the construction of an ornamental arch or gate with some suitable or simple inscription thereon, as a memorial to his wife and himself, at some suitable part of Civic Center, a park of Denver, Col., designed for public convenience and to promote civic beauty and civic pride. *Held*, that the will created a valid charitable trust. *Haggin* v. *International Trust Co.* (Col. 1917), 169 Pac. 138.

According to the general rule, the existence of a definite beneficiary, capable of enforcing its execution, is indispensable to the creation of a valid trust. *Morice* v. *Bishop of Durham*, 10 Ves. 521; *Adye* v. *Smith*, 44 Conn. 60; *Nichols* v. *Allen*, 130 Mass. 211; *Little* v. *Willford*, 31 Minn. 173; *Holland* v. *Alcock*, 108 N. Y. 312; *Stonestreet* v. *Doyle*, 75 Va. 356. To this general rule there are at least two well defined exceptions,—charities and monuments. See 5 HARV. L. REV. 389 and 15 HARV. L. REV. 509. It may be assumed that the trust in the instant case would have been good as a charity, if it had provided merely for the erection of an ornamental arch or monument in a public park. The question then is whether the trust is any less a charity because of the provision in the will for the inscription of the names of the testator and his wife as the donors. To hold that such provision prevented the trust from being a charity would mean that the motives of the testator should be determinative of whether or not a charity were created, for certainly the monu-

ment is not rendered less beautiful or less ornate by the inscription. Such would afford no sound or satisfactory basis for the law of charitable trusts; it would also deprive the public of the benefits of many trusts simply because of some selfish motive on the part of the testator. Indubitably, the purpose and objects of a gift in a will, and not the motives of the testator, will determine whether or not it is charitable. *Smith* v. *Walker,* 181 Pa. 109; *In re Graves,* 242 Ill. 23; *Morristown Trust Co.* v. *Morristown,* 82 N. J. Eq. 521, (*contra*). But if it were held that such a trust, as the one in the instant case, is not a charity, the question arises whether it comes within the second exception, that of monuments, and is hence valid. It seems as if the reason why it is held not a charity is an argument *per se* that is is a monument. The large number of cases, that have held trusts for the erection of a monument valid, has provided for monuments at the graves of the testators. *Adnam* v. *Cole,* 6 Beav. 353; *Detwiller* v. *Hartman,* 37 N. J. Eq. 347;*Re Frazer,* 92 N. Y. 239; *Bainbridge's App.,* 97 Pa. 482; *Fite* v. *Beasley,* 80 Tenn. 328; *Emans* v. *Hickman,* 12 Hun. 425. Though it is clear that the instant case does not come within the facts of the majority of cases relative to monuments, yet it seems just as clear that it does come within the principle enunciated by those cases. The one monument appears to be as much a part of the funeral expenses as the other, and as much a tribute to the deceased to whose memory it was erected. It was so held in *Trimmer* v. *Danby,* 24 L. J. Rep. Ch. 424 (426), where the will provided for the erection of a monument to the testator's memory in St. Paul's Cathedral. A number of cases have held that it is not necessary that the monument be erected to the testator's memory. *Masters* v. *Masters,* 1 P. Wms. 423; *Mussett* v. *Bingle,* W. N. (1876) 170; *Wood* v. *Vandenburgh,* 6 Paige 277.

COMPROMISE AND SETTLEMENT—WHAT CONSTITUTES.—Defendants admitted liability for the amount of two shipments of shoes, but denied a claim arising out of a third shipment, having countermanded their order before delivery. Upon the receipt of a statement from plaintiff which included the three items, defendants mailed him a check for the precise amount due on the two admitted claims, stating at the same time that the check was in full of account. Plaintiff accepted and cashed the check, and later brought this action for the amount due on the third shipment. Defendants pleaded an accord and satisfaction. *Held,* that as to the third item, the acceptance of the check did not amount to a compromise and settlement, and that plaintiff could only recover damages for the breach of the contract. *Krohn-Fechheimer Co.* v. *Palmer,* (Mo., 1917), 199 S. W. 763.

The rule that acceptance of a less sum than is actually due will not operate to extinguish the whole debt, although agreed by the creditor to be received on such condition, is well established by the great weight of authority. BISHOP, CONTRACTS, §50. Logically it is difficult to perceive any sound distinction between the above case and payment of an amount concededly due on a claim, the remainder of which is disputed. Accordingly some courts have held that in the latter event there is no binding compromise, there being no